

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

DOCKET NO. 150071-SU
ORDER NO. PSC-16-0415-PCO-SU
ISSUED: September 28, 2016

ORDER GRANTING IN PART AND DENYING IN PART K W RESORT UTILITIES CORP.'S MOTION TO COMPEL DISCOVERY FROM MONROE COUNTY

Background

On July 1, 2016, K W Resort Utilities Corp. (KWRU or Utility) filed its petition for an increase in rates for its wastewater system located in Monroe County. Monroe County, the Office of Public Counsel (OPC), and Ann M. Aktabowski, on behalf of Harbor Shores Condominium Unit Owners Association, Inc. filed a request for a formal hearing and a protest of all or substantially all portions of the Proposed Agency Action (PAA Order) Order No. PSC-16-0123-PAA-SU issued on March 23, 2016. A hearing is set for November 7-9, 2016.

On May 5, 2016, KWRU propounded upon Monroe County its First Set of Interrogatories and its First Request for Production of Documents. Monroe County filed its objections and responses to the discovery request on June 9, and June 27, 2016 respectively. On July 1, 2016, KWRU filed the Motion to Compel Production of Documents and Interrogatories from Monroe County (Motion) that is the subject of this order. On July 8, 2016, Monroe County filed a response in opposition to KWRU's Motion. Subsequently on August 18, 2016, KWRU withdrew its Motion as to the following Interrogatory numbers: 5-7, 9-11, 15, 17, 18, 23, 25, 28, 30, 39, 41, 42, 43, 48, 50, 52, and 53. Therefore, the only discovery responses that remain at issues are Request for Production of Documents numbers 6, 7, 9-36, 38-43, 45, 47-52, and Interrogatory numbers 8, 12-14, 16, 19-22, 24, 26, 27, 29, and 31 (collectively "discovery request") described in Attachments A and B to this Order.

KWRU's Motion to Compel

KWRU argues that Monroe County's objections to KWRU's First Set of Interrogatories (Interrogatories) and First Request for Production of Documents (production of documents) should be overruled, and that Monroe County should be ordered to fully respond to interrogatories or produce any documents within its possession, dominion, and/or control. KWRU asserts that Monroe must be responsive to its discovery request in order to be compliant with Section 120.569, Florida Statutes (F.S.). KWRU cites Dodson v. Persell, 390 So. 2d 704, 706 (Fla. 1980) and rule 1.350, Florida Rules of Civil Procedure, to support its contention that discovery may be used in the early stages of a proceeding so that issues may be resolved, and to provide all parties with all available sources of proof in an effort to remove the element of surprise from the proceedings.

KWRU contends that Monroe County has had access and control of all documents utilized by the Florida Public Service Commission (Commission) to issue its PAA Order. KWRU states that Monroe County's "unwillingness to provide simple answers as to the basis for which the County's protests are lodged leads to the assumption that these protests were made in bad faith without any basis for protesting the PSC's PAA Order." KWRU concludes by requesting that the Commission compel Monroe County to respond to its discovery request or provide a reasonable explanation as to why Monroe County is unable to respond.

Monroe County's Response to the Motion

In its response to the Motion, Monroe County asserts that it provided responses to KWRU's interrogatories consistent with the Order Establishing Procedure (OEP), issued on May 17, 2016, as well as any applicable rules. Monroe County contends that while it raised general and specific objections to all of the Interrogatories in order to reserve its objections, Monroe County still responded to each Interrogatory. Monroe County claims that each response was complete and true at the time each was made. As relates to Interrogatory No. 8, Monroe County asserts that it inadvertently omitted its response which should have been "unknown at this time." Monroe County argues that its use of "unknown at this time" as an answer to several Interrogatories does not render the objections invalid, nor does it provide any basis to compel Monroe County to produce more specific answers at this time. Monroe County also claims that despite its stated general and specific objections, it still provided all responsive documents to the extent that such documents existed.

Monroe County also argues that KWRU's Motion does not provide specific or detailed analysis or discussion for each Interrogatory or request for production of documents and fails to explain why its responses were deficient. This, Monroe County asserts, makes it difficult to formulate a response. Additionally, Monroe County argues that Section 120.569, F.S. is "wholly irrelevant to the issue of whether the County's responses to the Discovery Requests are adequate."

Decision

Having reviewed KWRU's discovery requests, Monroe County's responses thereto, and KWRU's Motion and Monroe County's response to the Motion, I hereby grant KWRU's motion in part and deny it in part. Rule 1.280, Florida Rules of Civil Procedure allows a broad range of discovery limited merely by relevance or privilege. Accordingly, KWRU's Motion is granted and denied as follows.

Of the Interrogatory responses still at issue, Monroe County responded to Interrogatory Nos. 8,¹ 12-14, 16, 19-20, 22, 24, 26, 27, and 29 as "unknown at this time." Within its response to the Motion, Monroe County stated that all responses provided to the discovery requests were "complete and true at the time provided." As KWRU has failed to provide any arguments that could support a conclusion that Monroe County was insincere in its assertion, KWRU's Motion

¹ As amended within Monroe County's response to the Motion.

is denied as to Interrogatory Nos. 8, 12-14, 16, 19-20, 22, 24, 26, 27, and 29. Similarly, in response to Interrogatory No. 21, while Monroe County stated that “[a]t this time, it is not possible to state exactly what an appropriate adjustment might be,” Monroe County also identified the documentation that it will use in order to determine what the appropriate adjustment. I find that Monroe County’s response was fully responsive and deny the Motion as to Interrogatory 21.

Interrogatory No. 31 reads:

Please state with specificity the basis for your protest of the rates “both as to their overall levels and also as to the structure of the rates as between Base Facility Charges and Gallonage Charges,” as stated in page 9-10 of your Petition, and identify all documents, information and/or other evidence, which support your contention.

Monroe County responded in part that:

With respect to the overall levels of the proposed rates, Monroe County believes that the proposed rates are unfair, unjust, and unreasonable because they include estimated costs that KWRU alleges would be incurred in future periods while the rates designed to recover those costs would be calculated using outdated billing determinants or sales units, resulting in such rates being greater than they should be . . . Monroe County’s position regarding rate structure as between Base Facility charges and Gallonage Charges, and also with respect to KWRU’s attempt to request that Monroe County identify documents, information, and evidence, this Interrogatory is premature in that the answers –i.e., the evidence that the County will present on the issues in the case – are the subject of ongoing discovery and are not yet known.

I disagree with Monroe County’s assertion that KWRU’s Interrogatory request was premature. Given the unique facts of this case, in that this is a protest of PAA Order, Monroe County was aware of KWRU’s request and the documentation submitted supporting that request. In fact, in order to file its petition, Monroe County had to comply with Rule 28-106.201, Florida Administrative Code (F.A.C.). Rule 28-106.201(d) and (e), F.A.C., requires that the petitioner state all disputed issues of material fact, and to make a concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency’s proposed action. Therefore, KWRU’s Motion as relates to Interrogatory No. 31 is hereby granted. Monroe County is ordered to fully respond to Interrogatory No. 31 within 10 days of the issuance of this Order.

KWRU’s Motion also requests to compel responses for certain Request for Production of Documents (Request). In response to KWRU’s Request Nos. 6-7, 9-36, 38-43, 45, 47, and 51, Monroe County responded as follows:

Subject to and without waiving its General Objections or Specific Objections, the county notes that KWRU's MRFs filed in this docket and all other documents filed in the docket are responsive to this Request. All of these documents are equally available to KWRU. Therefore, the County will not produce these documents. No other responsive documents have been identified at this time.

With slight variations in its responses to Request Nos. 19, 26, 28, 29, 43, 50, and 51, the quoted text above was provided verbatim for Request Nos. 6-51 as identified within this paragraph.

This docket, Docket No. 150071-SU, was opened on March 3, 2015, and since that time, the number and type of documents filed within the docket has grown extensively. Additionally, several documents filed within the docket file are quite lengthy and cover several of the topics at issue within this protest; the Minimum Filing Requirements (MFRs) in of itself is over 400 pages. I do not find Monroe County's statement that it relied upon the MFRs and all other documents filed within this docket, which are equally available to the Utility, to be responsive to KWRU's request. Therefore, KWRU's Motion is granted as to Request Nos. 6-7, 9-36, 38-43, 45, and 47-51.

To the extent that Monroe County relied on documents within the docket file, it shall respond to each of the identified Requests with the specific document number assigned to document within the docket file. Additionally, to the extent that the identified documents are over 25 pages, and cover multiple topic areas, Monroe County shall also identify the specific page numbers within each document responsive to the Requests granted above. Monroe County shall provide responses to the above granted Requests within 10 days of the issuance of this Order.

In its response to Request No. 52, Monroe County stated that "subject to and without waiving its General Objections and Specific Objections, the County notes that the PAA Order is responsive to this Request." I find that this response is responsive to the Request and the underlying Interrogatory. Therefore, KWRU's Motion is denied as to Request No. 51.

Based on the foregoing, it is

ORDERED by Commissioner Jimmy Patronis, as Prehearing Officer, that K W Resort Utilities Corp.'s Motion to Compel Production of Documents and Interrogatories From Monroe County granted in part and denied in part as set forth within the body of this Order. It is further

ORDERED that Monroe County shall provide responses to KWRU's discovery request, as detailed herein, within 10 days of the issuance of this order.

By ORDER of Commissioner Jimmy Patronis, as Prehearing Officer, this 28th day of September, 2016.



JIMMY PATRONIS
Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KRM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

K W Resort Utilities Corp.'s First Request For Production
To Petitioner Monroe County, Florida

6. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 8 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.
7. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 9 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.
9. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 11 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.
10. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 12 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.
11. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 13 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.
12. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 14 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.
13. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 15 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.
14. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 16 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.
15. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 17 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.
16. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 18 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

17. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 19 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

18. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 20 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

19. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 21 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

20. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 22 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

21. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 23 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

22. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 24 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

23. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 25 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

24. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 26 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

25. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 27 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

26. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 28 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

27. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 29 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

28. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 30 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

29. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 31 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

30. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 32 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

31. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 33 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

32. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 34 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

33. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 35 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

34. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 36 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

35. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 37 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

36. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 38 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

38. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 40 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

39. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 41 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

40. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 42 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

41. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 43 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

42. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 44 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

43. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 45 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

45. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 47 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

47. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 49 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

48. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 50 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

49. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 51 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

50. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 52 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

51. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 53 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

52. Any and all documents supporting, negating, related to, or identified in your response to Interrogatory No. 54 in KWRU's First Set of Interrogatories to Petitioner Monroe County, Florida.

K W Resort Utilities Corp.'s First Set Of Interrogatories
To Petitioner Monroe County, Florida

8. Identify, with specificity, all evidence you intend to present “on each component that goes into the calculation or determination of the main issue addressed in a given subject area, including but not limited to Rate Base, Test Year Expenses and Pro Forma Expenses, Capital Structure, Rates and Rate Structures, and KWRU’s Service Availability Policy and Plant Capacity Charges,” as stated in paragraph 10 of your Petition.

12. Please state with specificity what you believe the appropriate amount of rate base to be used in setting Phase I and Phase II rates should be, and identify all documents, information and/or other evidence, which support your contention.

13. Please state with specificity what you believe the appropriate amount of Plant in Service to be used in setting Phase I and Phase II rates should be, and identify all documents, information and/or other evidence, which support your contention.

14. Please state with specificity what you believe the appropriate used and useful percentage for wastewater treatment plant for Phase II rates should be, and identify all documents, information and/or other evidence, which support your contention.

16. Please state with specificity what you believe the appropriate amount accumulated depreciation to be used in determining the rate base that is used for setting Phase I and Phase II rates should be, and identify all documents, information and/or other evidence, which support your contention.

19. Please state with specificity what you believe the appropriate capital structure to be used in setting Phase I and Phase II rates should be, and identify all documents, information and/or other evidence, which support your contention.

20. Please state with specificity what you believe the appropriate level of expenses for KWRU related to meeting Advanced Wastewater Treatment (“AWT”) Standards should be, and identify all documents, information and/or other evidence, which support your contention.
ANSWER:

21. Please state with specificity what you believe the adjustment, if any, should the Commission make to recognize the alleged fact that KWRU’s rates approved by The Commission in KWRU’s last rate case included amounts to meet AWT Standards, and that those rates became effective in 2009, but KWRU allegedly did not achieve AWT standards until November or December 2015, and identify all documents, information and/or other evidence, which support your contention.

22. Please state with specificity what you believe the appropriate amount of expenses related to the Utility’s expansion of the wastewater treatment plant for Phase II rates should be, and identify all documents, information and/or other evidence, which support your contention.

24. Please state with specificity what you believe the appropriate amount of fees and amount of amortization expense for those fees associated with the legal challenge of the Utility's construction permit for the expansion of the wastewater treatment plant to be included in Phase I rates should be, and identify all documents, information and/or other evidence, which support your contention.

26. Please state with specificity what you believe the appropriate amounts of test year accounting fees to be included in setting Phase I and Phase II rates should be, and identify all documents, information and/or other evidence, which support your contention.

27. Please state with specificity what you believe the appropriate amounts of rate case expense to be included in setting Phase I and Phase II rates should be, and identify all documents, information and/or other evidence, which support your contention.

29. Please state with specificity what you believe the appropriate amounts of taxes other than income taxes to be included in setting Phase I and Phase II rates should be, and identify all documents, information and/or other evidence, which support your contention.

31. Please state with specificity the basis for your protest of the rates "both as to their overall levels and also as to the structure of the rates as between Base Facility Charges and Gallonage Charges," as stated in page 9-10 of your Petition, and identify all documents, information and/or other evidence, which support your contention.